

By the order dated 22-2-2005, the trial Court took

cognizance of the offences under Sections 406 and 420 IPC and issued process against the petitioner.

It is contended by the learned counsel for the petitioner that the complainant/non-petitioner No.2 lodged a first information report being FIR No. 257/2004, Police Station, Begun. After investigation, the police filed negative final report. Without considering the grounds mentioned in the negative final report, as also without accepting or rejecting the conclusion arrived at by the police in the negative final report, the trial Court took cognizance of the offences. Learned counsel has relied on a decision of the Hon'ble Supreme Court in Suresh Vs. Mahadevappa Shivappa Danannava & Anr., 2005 Cr.L.R. (SC) 295, wherein the Hon'ble Supreme Court held that the Magistrate has not considered the report filed by the police under Section 156 (3) Cr.P.C. judicially. Irrespective of the opinion of the police, the Magistrate may or may not take cognizance under Section 190 (1) Cr.P.C.

Having heard the learned counsel for the parties and on perusal of the order impugned, it no where appears that the trial Magistrate either accepted the negative final report or rejected it and, therefore, the impugned order cannot be sustained and is liable to be set aside and the matter deserves to be remanded to the trial Court to pass a fresh order.

The criminal miscellaneous petition is partly allowed.

The impugned order dated 22-2-2005 passed by the trial Court is set aside and the matter is remanded to the trial Court to pass a fresh order in accordance with law.

(H.R. PANWAR), J.

mcs